

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LOUISVILLE GAS AND ELECTRIC COMPANY	)	
and	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
	)	
_____	)	CASE NO. 96-246
	)	
ALLEGED VIOLATION OF COMMISSION	)	
REGULATIONS 807 KAR 5:041, SECTION 3 AND	)	
807 KAR 5:061, SECTION 3	)	

O R D E R

BellSouth Telecommunications, Inc. ("BellSouth") has moved to dismiss this proceeding on the grounds that insufficient evidence exists to support a violation of Administrative Regulation 807 KAR 5:061, Section 3. The Louisville Gas and Electric Company ("LG&E") has joined in the motion and further argues that the record contains insufficient evidence to support a violation of Administrative Regulation 807 KAR 5:041, Section 3. Having considered the motions and reviewing the evidence of record, we deny.

On December 28, 1995, Nicholas Poth was fatally injured while installing cable television service at 4801 Toledo Lane, Louisville, Kentucky. At the time of the incident, Poth stood on a fiberglass extension ladder that was leaning against an LG&E utility pole and was positioned directly under a 7200-volt conductor. He was electrocuted when the conductive extension of the fiberglass pole that he was using to pull a cable wire through a nearby tree contacted the 7200 volt overhead conductor.

Commission Staff visited the incident site on the day of the incident. At Commission Staff's direction, LG&E employees measured the clearances of various utility facilities at the incident site. Commission Staff members directly observed most measurements, but not those involving aerial readings. Commission Staff subsequently attempted to independently confirm the aerial readings but was unable because LG&E had removed some of its facilities from the incident site.

Based upon its December 28, 1995 measurements, Commission Staff found that the vertical clearance between the telephone conductor and the cut-out on the utility pole was only 36 inches. This clearance did not comply with 1981 National Electrical Safety Code ("NESC") Section 235C1 that requires a vertical clearance of 40 inches between communications conductors and open supply conductors having a voltage of 7200 volts or 1981 NESC Section 238B that requires a vertical clearance of 40 inches between communications conductors and non-current carrying metal parts of equipment located on the same structure.

The findings of the Commission Staff contradict the measurements that LG&E reported to the Commission in its report of the incident on January 2, 1996. LG&E reported a vertical clearance of 41 inches between the telephone conductor and the utility pole cut-out. This measurement suggests that both utility facilities complied with NESC clearance requirements.

On June 11, 1996, the Commission initiated this proceeding to determine whether LG&E should be assessed a penalty for alleged violations of Administrative Regulation

807 KAR 5:041, Section 3.<sup>1</sup> The Commission subsequently expanded the scope of this proceeding to also consider whether BellSouth should be assessed a penalty for alleged violations of Administrative Regulation 807 KAR 5:061, Section 2.<sup>2</sup>

BellSouth now moves to dismiss the proceedings on the grounds of insufficient evidence.<sup>3</sup> It contends that neither Commission Staff nor any party to this proceeding can establish the vertical clearance of the telephone conductor to the utility pole cut-out on December 28, 1995. Neither Commission Staff nor LG&E employees measured this clearance on that date. Subsequent measurement is impossible since LG&E has removed the cut-out and otherwise altered the incident site. Commission Staff's findings are based upon its calculations that consider other measurements taken at the incident site.

BellSouth further notes that Commission Staff's measurements are disputed. It states that the measurements contained in LG&E's report of January 2, 1996 contradict those of Commission Staff. BellSouth further states that Commission Staff found

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<sup>1</sup> "A[n electric] utility shall construct and maintain its plant and facilities in accordance with good accepted engineering practices. Unless otherwise specified by the commission, the utility shall use applicable provisions in the following publications as standards of accepted good engineering practice for construction and maintenance of plant and facilities, herein incorporated by reference: (1) National Electrical Safety Code; ANSI C2. . . ."

<sup>2</sup> "A [telephone] utility shall construct and maintain its plant and facilities in accordance with good accepted engineering practices. Unless otherwise specified by the commission, the utility shall use applicable provisions in the following publications as standards of accepted good engineering practice for construction and maintenance of plant and facilities, herein incorporated by reference: (1) National Electrical Safety Code; ANSI C2. . . ."

<sup>3</sup> As LG&E's motion merely adopts BellSouth's arguments, the Commission's discussion will focus on BellSouth's motion only.

discrepancies between its measurements of December 28, 1995 and those made on March 6, 1996. These discrepancies draw into question the accuracy of Commission Staff's earlier measurements and of its calculation of the vertical clearance distance.

BellSouth also contends that there is substantial evidence that Mr. Poth tampered with its facilities. In an affidavit attached to BellSouth's motion, a BellSouth operations manager experienced in construction and maintenance quality inspection states that significant changes in BellSouth facilities were apparently made shortly before the December 28, 1995 incident.

Having considered the motions and being otherwise sufficiently advised, the Commission finds that the motions should be denied. A clear question of fact currently exists. The existing record shows that measurements taken on December 28, 1995 support the conclusion that the vertical clearance between the telephone conductor and the utility pole cut-out did not meet NESC standards. In its response to the Commission's Order of June 11, 1996, LG&E accepted "the accuracy of the relevant measurements recited in the Accident Investigation Report."<sup>4</sup> While valid questions about the accuracy of these measurements exist, these questions do not justify dismissal of these proceedings. They instead require further inquiry on this Commission's part.

The possibility of tampering with BellSouth facilities is another issue that is significant and requires further consideration. The evidence that BellSouth has submitted, however, does not negate the need for further proceedings. It too requires such proceedings.

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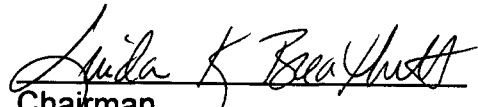
<sup>4</sup> Response of Louisville Gas and Electric Company to the Commission's Order of June 11, 1996 at 1.


IT IS THEREFORE ORDERED that:


1. The motions of BellSouth and LG&E to dismiss this proceeding are denied.
2. A formal hearing in this matter shall be begin on September 16, 1997 at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.
3. Commission Staff shall, on or before May 23, 1997, file in verified prepared form the testimony of each witness who will testify on its behalf at the scheduled hearing.
4. Each party may, on or before June 13, 1997, serve upon Commission Staff requests for production of documents and written interrogatories pertaining to Commission Staff's filed testimony to be answered by Commission Staff no later than July 4, 1997.
5. Each party shall, on or before July 25, 1997, file in verified prepared form testimony concerning the alleged violations, the measurement of clearance distances on December 28, 1995, and any other relevant issues.
6. Commission Staff may, on or before August 15, 1997, serve upon any party requests for production of documents and written interrogatories pertaining to Commission Staff's filed testimony to be answered by Commission Staff no later than September 5, 1997.
7. Any party wishing to submit a written brief in this matter shall do so within 20 days of the filing of the hearing transcript.

Done at Frankfort, Kentucky, this 7th day of May, 1997.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director